Given this direction from the Government Printing Office and the Equal Employment Opportunity Commission, Petitioner's identification of the Rehabilitation Act as the statutory basis of her claim can be excused. *See e.g., Turner v. District of Columbia Board of Elections and Ethics*, 183 F. Supp. 2d 22, 28 (D.D.C. 2001)("[E]quitable tolling applies in situations 'where the claimant has actively pursued his judicial remedies by filing a defective pleading . . . or where he has been 'induced or tricked by his adversary's misconduct . . .'").

6. The District of Columbia Circuit did not address the applicability of the Congressional Accountability Act. The District of Columbia Circuit also did not address the public policy issue of GPO's representations to its employees. The Court affirmed the lower court ruling.

7. This petition for a writ of certiorari followed.

IX. Reasons for Granting the Writ

1. Certiorari is warranted because the Court of Appeals for the District of Columbia Circuit has decided an important question of federal law that has not been, but should be, settled by this Court. The question presented as to whether the Government Printing Office is subject to the provisions of the Rehabilitation Act is very important. GPO, like other legislative agencies, advertises that it is an equal opportunity employer. It advises employees that it will provide reasonable accommodations for qualified individuals with

disabilities. When disputes do arise relating to discrimination issues, employees are directed to the GPO EEO office for investigation and resolution. Once a formal complaint is filed, the EEO office sets the parameters of the investigation. In Petitioner's case, the EEO office identified the issue as one involving the Rehabilitation Act, which covers disability-based discrimination against government employees. All parties proceeded throughout the investigation and subsequent litigation before the Equal Employment Opportunity Commission (EEOC) under the belief that the Rehabilitation Act governed the GPO's actions. Not until Petitioner filed her complaint in the U.S. District Court for the District of Columbia, did GPO raise the defense that the Rehabilitation Act did not apply, relying on an unpublished decision issued by the same district court. The District Court's dismissal of the complaint on jurisdictional grounds effectively left Petitioner, and presumably other legislative employees, with no recourse for her underlying claim, with no one at GPO held accountable.

Respectfully submitted,

/s/

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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-5428 September Term, 2005

04cv00088

Filed On: November 29, 2005

[934222]
Catherine V. Collins,
Appellant

v.

Bruce R. James, Public Printer, United States Government Printing Office,
Appellee

Appeal from the United States District Court
for the District of Columbia
(04cv00088)

BEFORE: SENTELLE, RANDOLPH, and ROGERS, *Circuit Judges.*

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs of the parties. The court has determined that the issues presented occasion no need for an opinion. See D.C. CIR. R. 36(b).

Catherine Collins, an employee of the Government Printing Office ("GPO"), suffered a "severe cervical strain" while on the job in August 2000. In January 2004, Collins filed a civil suit, alleging the GPO failed to accommodate her disability in violation of the Rehabilitation Act of 1973, 29 U.S.C. §§ 701-796/. in October 2004, the District Court granted the GPO's motion to dismiss for lack of subject matter jurisdiction under FED. R. CIV. P.12(b){1), holding that the GPO is not subject to the provisions of the Rehabilitation Act. Collins timely appealed.

It is undisputed that the Rehabilitation Act, by its own terms, does not apply to the GPO. See 29 U.S.C. § 791 (b) (limiting the statute's applicability *to executive* branch employees); *Thompson v. Sawyer,* 678 F.2d 257, 264 (D.C. Cir. 1982) ("The Government Printing Office is a unit of the *legislative* branch . . . ." (emphasis added)). It is also undisputed that the Congressional Accountability Act of 1995 ("CAA"), 2 U.S.C. §§ 1301-1438, extends rights under the Rehabilitation Act to certain "covered employees" in the legislative branch, but GPO employees are not "covered." See *id.* §§ 1302(a)(10), 1311(a)(3), 1301(3); see *also* Pub. L. No. 104-1, § 201(c), 109 Stat. 8 (codified as amended at42 U.S.C.§ 2000e~16,29 U.S.C. §-633a(a), 42 U.S.C. § 12209) (extending some antidiscrimination laws — but not the Rehabilitation Act — to cover the GPO). We cannot rewrite these statutes to create federal subject matter jurisdiction over Appellant's Rehabilitation Act claim. See *Kontrick v. Ryan,* 540 U.S. 443, 452 (2004) ("Only Congress may determine a lower federal court's

subject-matter jurisdiction.") (citing U.S. Const., Art. III, § 1).

Appellant also argues that she should have an opportunity to amend her complaint However, Appellant failed to make an appropriate motion under either FED. R. CIV. P. 15(a) or 28 U.S.C. § 1653, and as a result, she has "waived the right to raise the amendment claim of error on appeal." *Gov't of Guam v. Am. President Lines,* 28 F.3d 142, 151 (D.C. Cir. 1994); see *also Loughlin v. United States,* 393 F.3d 155, 171-72 (D.C. Cir. 2004). Accordingly, it is

ORDERED AND ADJUDGED that the District Court's dismissal of the complaint under FED. R. Civ. P. 12{b){ 1) is affirmed.

Pursuant to Rule 36 of this Court, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after the disposition of any timely petition for rehearing or petition for rehearing en *bane. See* FED R. APP. P.41(b); D.C. CIR. R. 41.

Per Curiam
FOR THE COURT:
Mark J. Langer, Clerk

BY:
Michael C. McGrail
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CATHERINE VICTORIA COLLINS,

Plaintiff,

v. **Civil Action No. 04-0088 (JDB)**

BRUCE R. JAMES, Public Printer,
U.S. Government Printing Office,

Defendant.

[ENTERED: October 29, 2004]

MEMORANDUM OPINION

Plaintiff Catherine Victoria Collins has brought this discrimination action against the United States Government Printing Office ("GPO") pursuant to the Rehabilitation Act, 29 U.S.C. § 791 et sea^, alleging unlawful employment practices relating to her duty assignments after she suffered a work-related injury while employed at GPO. See Compl. ¶¶ 1, 4-5, 7-8, 14. The sole issue presented in GPO's pending motion to dismiss is whether, as a legislative branch entity, GPO is subject to the provisions of the Rehabilitation Act. If not, then GPO's motion must be granted and this action dismissed.

Each executive branch department, agency, and instrumentality is subject to the Rehabilitation Act. See 29 U.S.C. § 791(b). It is beyond dispute,

however, that GPO is a legislative branch agency. See Thompson v. Sawyer, 678 F.2d 257, 264 (D.C. Cir. 1982); see also United States v. Allison, 91 U.S. 303, 307 (1878) (Public Printer not under control of any executive department). Hence, GPO is not subject to the provisions of the Rehabilitation Act. See Barbour v. Jenifer, No. 89-0657, slip op. at 6-7 (D.D.C. June 25,1990) (Def.'s Mot. to Dismiss, Ex. 5); see also Judd v. Billington, 863 F.2d 103, 104-05 (D.C. Cir. 1988) (Rehabilitation Act does not apply to the Library of Congress as legislative branch entity).

To be sure, Congress extended rights under the Rehabilitation Act to employees of certain legislative branch agencies through the Congressional Accountability Act ("CAA"). See 2 U.S.C. § 1302(a)(10). But the relevant language of the CAA excludes GPO employees from such coverage; covered employees for purposes of the extension of the Rehabilitation Act are defined through a specific list of legislative branch entities that does not include GPO (or for that matter the General Accounting Office or the Library of Congress), See id. § 1301(3). Nor is GPO included in the succeeding definitions of "Employee" or "Employing Office."[1] See id. § 1301(4)-(9).[1]

Plaintiffs interpretation of the CAA as extending the Rehabilitation Act to the GPO is

---

[1] Although the EEOC has mistakenly included GPO within the coverage of recent amendments to Rehabilitation Act regulations, GPO has advised EEOC of that error and the EEOC has agreed with GPO's analysis and indicated that it will correct the regulations in the future. See Def.'s Mot. to Dismiss, Exs. 6 & 7.

therefore in error. The relevant statutory language reveals that GPO, the General Accounting Office, and the Library of Congress were treated differently under the CAA than were other legislative agencies. GPO is not listed as being subject to the Rehabilitation Act. Moreover, a specific statutory provision indicating which laws apply to GPO lists other discrimination statutes but not the Rehabilitation Act. See Pub. L. 104-1, § 201 (c), 109 Stat. 8 (codified at 42 U.S.C. § 2000e-16, 29 U.S.C. § 633a, and 42 U.S.C. § 12209). This Court has interpreted the CAA as not extending coverage of the Rehabilitation Act to GPO. See Barbour v. Jenifer, supra.

Plaintiff has, therefore, brought her action under a statute that does not grant jurisdiction to this Court. In that circumstance, dismissal of a case is warranted. See Taylor v. Small, 350 F.3d 1286, 1291-92 (D.C. Cir. 2003). Neither under the language of the Rehabilitation Act itself nor under the provisions of the Congressional Accountability Act is there subject matter jurisdiction over this case, and accordingly it must be dismissed.[2] A separate order shall be issued.

---

[2] Although plaintiff argues that GPO has held itself out to its employees as bound by the anti-discrimination policies of the Rehabilitation Act, and both GPO and the EEOC have arguably processed complaints under the Rehabilitation Act, it is plain that the jurisdiction of district courts is limited to matters within a statutory grant of jurisdiction, and actions by the parties cannot create subject-matter jurisdiction where it does not otherwise exist. See Ins. Corp. of Ireland, Ltd. v. Conrpagnie des Bauxites de Guinee, 456 U.S. 694, 701 (1982).

/s/ John D. Bates
JOHN D. BATES
United States District Judge

Dated: October 29, 2004

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CATHERINE VICTORIA COLLINS,

Plaintiff,

v. **Civil Action No. 04-0088 (JDB)**

BRUCE R. JAMES, Public Printer,
U.S. Government Printing Office,

Defendant.

[ENTERED: October 29, 2004]

ORDER

Upon consideration of defendant's motion to dismiss, the parties' memoranda, and the entire record herein, and for the reasons stated in the Memorandum Opinion issued on this date, it is this 29th day of October, 2004, hereby

ORDERED that the motion to dismiss is GRANTED, and it is further

ORDERED that this action is DISMISSED.

/s/ John D. Bates
JOHN D. BATES
United States District Judge

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TITLE 29—LABOR

CHAPTER 16—VOCATIONAL REHABILITATION AND OTHER REHABILITATION SERVICES

GENERAL PROVISIONS

Sec. 705. Definitions

For the purposes of this chapter:

(1) Administrative costs

The term "administrative costs" means expenditures incurred in the performance of administrative functions under the vocational rehabilitation program carried out under subchapter I of this chapter, including expenses related to program planning, development, monitoring, and evaluation, including expenses for—

(A) quality assurance;

(B) budgeting, accounting, financial management, information systems, and related data processing;

(C) providing information about the program to the public;

(D) technical assistance and support services to other State agencies, private nonprofit organizations, and businesses and industries, except for technical assistance and support services described in section 723(b)(5) of this title;

(E) the State Rehabilitation Council and other advisory committees;

(F) professional organization membership dues for designated State unit employees;

(G) the removal of architectural barriers in State vocational rehabilitation agency offices and State operated rehabilitation facilities;

(H) operating and maintaining designated State unit facilities, equipment, and grounds;

(I) supplies;

(J) administration of the comprehensive system of personnel development described in section 721(a)(7) of this title, including personnel administration, administration of affirmative action plans, and training and staff development;

(K) administrative salaries, including clerical and other support staff salaries, in support of these administrative functions;

(L) travel costs related to carrying out the program, other than travel costs related to the provision of services;

(M) costs incurred in conducting reviews of rehabilitation counselor or coordinator determinations under section 722(c) of this title; and

(N) legal expenses required in the administration of the program.

(2) Assessment for determining eligibility and vocational rehabilitation needs

The term "assessment for determining eligibility and vocational rehabilitation needs" means, as appropriate in each case—

(A)(i) a review of existing data—

(I) to determine whether an individual is eligible for vocational rehabilitation services; and

(II) to assign priority for an order of selection described in section 721(a)(5)(A) of this title in the States that use an order of selection pursuant to section 721(a)(5)(A) of this title; and

(ii) to the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make such determination and assignment;

(B) to the extent additional data is necessary to make a determination of the employment outcomes, and the nature and scope of vocational rehabilitation services, to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual, which comprehensive assessment—

(i) is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan for employment of the eligible individual;

(ii) uses, as a primary source of such information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements—

(I) existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection described in section 721 (a) (5) (A) of this title for the individual; and

(II) such information as can be provided by the individual and, where appropriate, by the family of the individual;

(iii) may include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental

factors, that affect the employment and rehabilitation needs of the individual; and

(iv) may include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the utilization of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment;

(C) referral, for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and

(D) an exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which shall be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

(3) Assistive technology device

The term "assistive technology device" has the meaning given such term in section 3002 of this title, except that the reference in such section to the term ""individuals with disabilities"[1] shall be deemed to mean more than one individual with a disability as defined in paragraph (20)(A).

(4) Assistive technology service

The term "assistive technology service" has the meaning given such term in section 3002 of this title, except that the reference in such section—

(A) to the term "'individual with a disability" shall be deemed to mean an individual with a disability, as defined in paragraph (20)(A); and

(B) to the term "individuals with disabilities" shall be deemed to mean more than one such individual.

(5) Community rehabilitation program

The term "community rehabilitation program" means a program that provides directly or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and that provides, singly or in combination, for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement—

(A) medical, psychiatric, psychological, social, and vocational services that are provided under one management;

(B) testing, fitting, or training in the use of prosthetic and orthotic devices;

(C) recreational therapy;

(D) physical and occupational therapy;

(E) speech, language, and hearing therapy;

(F) psychiatric, psychological, and social services, including positive behavior management;

(G) assessment for determining eligibility and vocational rehabilitation needs;

(H) rehabilitation technology;

(I) job development, placement, and retention services;

(J) evaluation or control of specific disabilities;

(K) orientation and mobility services for individuals who are blind;

(L) extended employment;

(M) psychosocial rehabilitation services;

(N) supported employment services and extended services;

(O) services to family members when necessary to the vocational rehabilitation of the individual;

(P) personal assistance services; or

(Q) services similar to the services described in one of subparagraphs (A) through (P).

(6) Construction; cost of construction

(A) Construction

The term "construction" means—

(i) the construction of new buildings;

(ii) the acquisition, expansion, remodeling, alteration, and renovation of existing buildings; and

(iii) initial equipment of buildings described in clauses (i) and (ii).

(B) Cost of construction

The term "cost of construction" includes architects' fees and the cost of acquisition of land in connection with construction but does not include the cost of offsite improvements.

(7) Repealed. Pub. L. 105-277, div. A, Sec. 101(f) [title VIII, Sec. 402(c)(1)(B)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-415

(8) Designated State agency; designated State unit

(A) Designated State agency

The term "designated State agency" means an agency designated under section 721(a)(2)(A) of this title.

(B) Designated State unit

The term "designated State unit" means—

(i) any State agency unit required under section 721(a)(2)(B)(ii) of this title; or

(ii) in cases in which no such unit is so required, the State agency described in section 721(a)(2)(B)(i) of this title.

(9) Disability

The term ""disability" means—

(A) except as otherwise provided in subparagraph (B), a physical or mental impairment that constitutes or results in a substantial impediment to employment; or

(B) for purposes of sections 701, 711, and 712 of this title, and subchapters II, IV, V, and VII of this chapter, a physical or mental impairment that substantially limits one or more major life activities.

(10) Drug and illegal use of drugs

(A) Drug

The term ""drug" means a controlled substance, as defined in schedules I through V of

section 2 02 of the Controlled Substances Act (21 U.S.C. 812).

(B) Illegal use of drugs

The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(11) Employment outcome

The term "employment outcome" means, with respect to an individual—

(A) entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market;

(B) satisfying the vocational outcome of supported employment; or

(C) satisfying any other vocational outcome the Secretary may determine to be appropriate (including satisfying the vocational outcome of self-employment, telecommuting, or business ownership), in a manner consistent with this chapter.

(12) Establishment of a community rehabilitation program

The term "'establishment of a community rehabilitation program" includes the acquisition, expansion, remodeling, or alteration of existing buildings necessary to adapt them to community rehabilitation program purposes or to increase their effectiveness for such purposes (subject, however, to such limitations as the Secretary may determine, in accordance with regulations the Secretary shall prescribe, in order to prevent impairment of the objectives of, or duplication of, other Federal laws providing Federal assistance in the construction of facilities for community rehabilitation programs), and may include such additional equipment and staffing as the Commissioner considers appropriate.

(13) Extended services

The term "extended services" means ongoing support services and other appropriate services, needed to support and maintain an individual with a most significant disability in supported employment, that—

(A) are provided singly or in combination and are organized and made available in such a way as to assist an eligible individual in maintaining supported employment;

(B) are based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment; and

(C) are provided by a State agency, a nonprofit private organization, employer, or any other appropriate resource, after an individual has

made the transition from support provided by the designated State unit.

(14) Federal share

(A) In general

Subject to subparagraph (B) , the term "Federal share" means 78.7 percent.

(B) Exception

The term "Federal share" means the share specifically set forth in section 731(a)(3) of this title, except that with respect to payments pursuant to part B of subchapter I of this chapter to any State that are used to meet the costs of construction of those rehabilitation facilities identified in section 723 (b) (2) of this title in such State, the Federal share shall be the percentages determined in accordance with the provisions of section 731 (a) (3) of this title applicable with respect to the State.

(C) Relationship to expenditures by a political subdivision

For the purpose of determining the non-Federal share with respect to a State, expenditures by a political subdivision thereof or by a local agency shall be regarded as expenditures by such State, subject to such limitations and conditions as the Secretary shall by regulation prescribe.

(15) Governor

The term "Governor" means a chief executive officer of a State.

(16) Impartial hearing officer

(A) In general

The term "impartial hearing officer" means an individual—

(i) who is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(ii) who is not a member of the State Rehabilitation Council described in section 725 of this title;

(iii) who has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(iv) who has knowledge of the delivery of vocational rehabilitation services, the State plan under section 721 of this title, and the Federal and State rules governing the provision of such services and training with respect to the performance of official duties; and

(v) who has no personal or financial interest that would be in conflict with the objectivity of the individual.

(B) Construction

An individual shall not be considered to be an employee of a public agency for purposes of subparagraph (A)(i) solely because the individual is paid by the agency to serve as a hearing officer.

(17) Independent living core services

The term "independent living core services" means—

(A) information and referral services;

(B) independent living skills training;

(C) peer counseling (including cross-disability peer counseling); and

(D) individual and systems advocacy.

(18) Independent living services

The term "independent living services" includes—

(A) independent living core services; and

(B)(i) counseling services, including psychological, psychotherapeutic, and related services;

(ii) services related to securing housing or shelter, including services related to community

group living, and supportive of the purposes of this chapter and of the subchapters of this chapter, and adaptive housing services (including appropriate accommodations to and modifications of any space used to serve, or occupied by, individuals with disabilities);

(iii) rehabilitation technology;

(iv) mobility training;

(v) services and training for individuals with cognitive and sensory disabilities, including life skills training, and interpreter and reader services;

(vi) personal assistance services, including attendant care and the training of personnel providing such services;

(vii) surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;

(viii) consumer information programs on rehabilitation and independent living services available under this chapter, especially for minorities and other individuals with disabilities who have traditionally been unserved or underserved by programs under this chapter;

(ix) education and training necessary for living in a community and participating in community activities;

(x) supported living;

(xi) transportation, including referral and assistance for such transportation and training in the use of public transportation vehicles and systems;

(xii) physical rehabilitation;

(xiii) therapeutic treatment;

(xiv) provision of needed prostheses and other appliances and devices;

(xv) individual and group social and recreational services;

(xvi) training to develop skills specifically designed for youths who are individuals with disabilities to promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options;

(xvii) services for children;

(xviii) services under other Federal, State, or local programs designed to provide resources, training, counseling, or other assistance, of substantial benefit in enhancing the independence, productivity, and quality of life of individuals with disabilities;

(xix) appropriate preventive services to decrease the need of individuals assisted under this chapter for similar services in the future;

(xx) community awareness programs to enhance the understanding and integration into society of individuals with disabilities; and

(xxi) such other services as may be necessary and not inconsistent with the provisions of this chapter.

(19) Indian; American Indian; Indian American; Indian tribe

(A) In general

The terms "Indian", "American Indian", and "Indian American" mean an individual who is a member of an Indian tribe.

(B) Indian tribe

The term "Indian tribe" means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]).

(20) Individual with a disability

(A) In general

Except as otherwise provided in subparagraph (B), the term "individual with a disability" means any individual who—

(i) has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; and

(ii) can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to subchapter I, III, or VI of this chapter.

(B) Certain programs; limitations on major life activities

Subject to subparagraphs (C), (D), (K), and (F), the term ""individual with a disability[1]" means, for purposes of sections 701, 711, and 712 of this title, and subchapters II, IV, V, and VII of this chapter, any person who—

(i) has a physical or mental impairment which substantially limits one or more of such person's major life activities;

(ii) has a record of such an impairment; or

(iii) is regarded as having such an impairment.

(C) Rights and advocacy provisions

(i) In general; exclusion of individuals engaging in drug use

For purposes of subchapter V of this chapter, the term ""individual with a disability[11] does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use.

(ii) Exception for individuals no longer engaging in drug use

Nothing in clause (i) shall be construed to exclude as an individual with a disability an individual who—

(I) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(II) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(III) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an

individual described in subclause (I) or (II) is no longer engaging in the illegal use of drugs.

(iii) Exclusion for certain services

Notwithstanding clause (i), for purposes of programs and activities providing health services and services provided under subchapters I, II, and III of this chapter, an individual shall not be excluded from the benefits of such programs or activities on the basis of his or her current illegal use of drugs if he or she is otherwise entitled to such services,

(iv) Disciplinary action

For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any student who is an individual with a disability and who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against students who are not individuals with disabilities. Furthermore, the due process procedures at section 104.36 of title 34, Code of Federal Regulations (or any corresponding similar regulation or ruling) shall not apply to such disciplinary actions,

(v) Employment; exclusion of alcoholics

For purposes of sections 793 and 794 of this title as such sections relate to employment, the term *'individual with a disability" does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.

(D) Employment; exclusion of individuals with certain diseases or infections

For the purposes of sections 793 and 794 of this title, as such sections relate to employment, such term does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.

(E) Rights provisions; exclusion of individuals on basis of homosexuality or bisexuality

For the purposes of sections 791, 793, and 794 of this title—

(i) for purposes of the application of subparagraph (B) to such sections, the term "'impairment•' does not include homosexuality or bisexuality; and

(ii) therefore the term "individual with a disability" does not include an individual on the basis of homosexuality or bisexuality.

(F) Rights provisions; exclusion of individuals on basis of certain disorders

For the purposes of sections 791, 793, and 794 of this title, the term "individual with a disability" does not include an individual on the basis of—

(i) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) compulsive gambling, kleptomania, or pyromania; or

(iii) psychoactive substance use disorders resulting from current illegal use of drugs.

(G) Individuals with disabilities

The term "individuals with disabilities" means more than one individual with a disability.

(21) Individual with a significant disability

(A) In general

Except as provided in subparagraph (B) or (C), the term "individual with a significant disability" means an individual with a disability—

(i) who has a severe physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(ii) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs described in subparagraphs (A) and (B) of paragraph (2) to

cause comparable substantial functional limitation.

(B) Independent living services and centers for independent living

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For purposes of subchapter VII of this chapter, the term ""individual with a significant disability[1]" means an individual with a severe physical or mental impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living services will improve the ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment, respectively.

(C) Research and training

For purposes of subchapter II of this chapter, the term "'individual with a significant disability" includes an individual described in subparagraph (A) or (B).

(D) Individuals with significant disabilities

The term ""individuals with significant disabilities" means more than one individual with a significant disability.

(E) Individual with a most significant disability

(i) In general

The term "individual with a most significant disability", used with respect to an individual in a State, means an individual with a significant disability who meets criteria established by the State under section 721(a)(5)(C) of this title.

(ii) Individuals with the most significant disabilities

The term "individuals with the most significant disabilities" means more than one individual with a most significant disability.

(22) Individual's representative; applicant's representative

The terms "individual's representative" and "applicant's representative" mean a parent, a family member, a guardian, an advocate, or an authorized representative of an individual or applicant, respectively.

(23) Institution of higher education

The term "institution of higher education" has the meaning given the term in section 1001 of title 20.

(24) Local agency

The term "local agency" means an agency of a unit of general local government or of an Indian tribe (or combination of such units or tribes) which has an

agreement with the designated State agency to conduct a vocational rehabilitation program under the supervision of such State agency in accordance with the State plan approved under section 721 of this title. Nothing in the preceding sentence of this paragraph or in section 721 of this title shall be construed to prevent the local agency from arranging to utilize another localpublic or nonprofit agency to provide vocational rehabilitation services if such an arrangement is made part of the agreement specified in this paragraph.

(25) Local workforce investment board

The term "local workforce investment board" means a local workforce investment board established under section 117 of the Workforce Investment Act of 1998 [29 U.S.C. 2832].

(26) Nonprofit

The term "nonprofit", when used with respect to a community rehabilitation program, means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under section 501(c)(3) of title 26.

(27) Ongoing support services

The term " ongoing support services[11] means services —

(A) provided to individuals with the most significant disabilities;

(B) provided, at a minimum, twice monthly—

(i) to make an assessment, regarding the employment situation, at the worksite of each such individual in supported employment, or, under special circumstances, especially at the request of the client, off site; and

(ii) based on the assessment, to provide for the coordination or provision of specific intensive services, at or away from the worksite, that are needed to maintain employment stability; and

(C) consisting of—

(i) a particularized assessment supplementary to the comprehensive assessment described in paragraph (2)(B);

(ii) the provision of skilled job trainers who accompany the individual for intensive job skill training at the worksite;

(iii) job development, job retention, and placement services;

(iv) social skills training;

(v) regular observation or supervision of the individual;

(vi) followup services such as regular contact with the employers, the individuals, the individuals' representatives, and other appropriate individuals, in order to reinforce and stabilize the job placement;

(vii) facilitation of natural supports at the worksite;

(viii) any other service identified in section 723 of this title; or

(ix) a service similar to another service described in this subparagraph.

(28) Personal assistance services

The term "personal assistance services" means a range of services, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform if the individual did not have a disability. Such services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

(29) Public or nonprofit

The term "public or nonprofit", used with respect to an agency or organization, includes an Indian tribe.

(30) Rehabilitation technology

The term "rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas which include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(31) Secretary

The term "Secretary", except when the context otherwise requires, means the Secretary of Education.

(32) State

The term "State" includes, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(33) State workforce investment board

The term "State workforce investment board" means a State workforce investment board established under section 111 of the Workforce Investment Act of 1998 [29 U.S.C. 2821].

(34) Statewide workforce investment system

The term "statewide workforce investment system" means a system described in section 111(d)(2) of the Workforce Investment Act of 1998 [29 U.S.C. 2821(d)(2)].

(35) Supported employment (A) In general

The term "supported employment" means competitive work in integrated work settings, or employment in integrated work settings in which individuals are working toward competitive work, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most significant disabilities—

(i)(I) for whom competitive employment has not traditionally occurred; or

(II) for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and

(ii) who, because of the nature and severity of their disability, need intensive supported employment services for the period, and any extension, described in paragraph (36)(C) and extended services after the transition described in paragraph (13)(C) in order to perform such work.

(B) Certain transitional employment

Such term includes transitional employment for persons who are individuals with the most significant disabilities due to mental illness.

(36) Supported employment services

The term "supported employment services" means ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment, that—

(A) are provided singly or in combination and are organized and made available in such a way as to assist an eligible individual to achieve competitive employment;

(B) are based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment; and

(C) are provided by the designated State unit for a period of time not to extend beyond 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator involved jointly agree to extend the time in order to achieve the employment outcome identified in the individualized plan for employment.

(37) Transition services

The term "transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post school activities,

including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

(38) Vocational rehabilitation services

The term vocational rehabilitation services" means those services identified in section 723 of this title which are provided to individuals with disabilities under this chapter.

(39) Workforce investment activities

The term "workforce investment activities" means workforce investment activities, as defined in section 101 of the Workforce Investment Act of 1998 [29 U.S.C. 2801], that are carried out under that Act.

Prior Provisions

Provisions similar to this section were contained in section 706 of this title prior to repeal by Pub. L. 105-220.

A prior section 705, Pub. L. 93-112, Sec. 6, Sept. 26, 1973, 87 Stat. 359; Pub. L. 99-506, title X, Sec. 1001 (a) (2), Oct. 21, 1986, 100 Stat. 1841; Pub. L. 100-630, title II, Sec. 201(b), Nov. 7, 1988, 102 Stat. 3303; Pub. L. 102-569, title I, Sec. 128(b)(l), Oct. 29, 1992, 106 Stat. 4388, related to consolidated rehabilitation plan, prior to repeal by Pub. L. 105-220, title IV, Sec. 403, Aug. 7, 1998, 112 Stat. 1093.

A prior section 7 of Pub. L. 93-112 was renumbered section 8 and is classified to section 706 of this title.

Another prior section 7 of Pub. L. 93-112 was classified to section 706 of this title prior to repeal by Pub. L. 105-220.

Amendments

1998—Pub. L. 105-277, Sec. 101(f) [title VIII, Sec. 402(b)(3)], made technical amendment to section designation and catchline in the original and inserted par. (1) heading.

Par. (2)(B). Pub. L. 105-277, Sec. 101(f) [title VIII, Sec. 402(c) (1) (A)], substituted "nature" for "objectives, nature, ".

Par. (3). Pub. L. 105-394, Sec. 402(a)(1), which directed the amendment of section 6 of the Rehabilitation Act of 1973 by substituting "3002" for "2202(2)", was executed to this section, which is section 7 of that act, to reflect the probable intent of Congress and the renumbering of section 6 as 7 by

Pub. L. 105-277, Sec. 101(f) [title VIII, Sec. 402(a)(1)].

Par. (4). Pub. L. 105-394, Sec. 402(a)(2), which directed the amendment of section 6 of the Rehabilitation Act of 1973 by substituting "3002" for "2202(3) ", was executed to this section, which is section 7 of that act, to reflect the probable intent of Congress and the renumbering of section 6 as 7 by Pub. L. 105-277, Sec. 101(f) [title VIII, Sec. 402(a)(1)].

Par. (7). Pub. L. 105-277, Sec. 101(f) [title VIII, Sec. 402(c)(1)(B)], struck out heading and text of par. (7). Text read as follows: "The term "criminal act" means any crime, including an act, omission, or possession under the laws of the United States or a State or unit of general local government, which poses a substantial threat of personal injury, notwithstanding that by reason of age, insanity, or intoxication or otherwise the person engaging in the act, omission, or possession was legally incapable of committing a crime."

Par. (16)(A)(iii). Pub. L. 105-277, Sec. 101(f) [title VIII, Sec. 402(c)(1)(C)], substituted "eligible individual" for "client".

Par. (23). Pub. L. 105-244 substituted "section 1001 of title 20" for "section 1141 (a) of title 20".

Par. (36)(C). Pub. L. 105-277, Sec. 101(f) [title VIII, Sec. 402(c)(1)(D)], substituted "employment outcome" for ""rehabilitation objectives".

Effective Date of 1998 Amendment

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

Section Referred to in Other Sections

This section is referred to in sections 722, 725, 773, 794, 795j, 796b, 796d, 3011 of this title; title 42 sections 5061, 12511.

TITLE 29—LABOR

CHAPTER 16—VOCATIONAL REHABILITATION AND OTHER REHABILITATION SERVICES

SUBCHAPTER V—RIGHTS AND ADVOCACY

Sec. 794a. Remedies and attorney fees

(a)(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), including the application of sections 706(f) through 706(k) (42 U.S.C. 2000e-5(f) through (k)), shall be available, with respect to any complaint under section 791 of this title, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section, a court may take into account the reasonableness of the cost of any necessary work place accommodation, and the availability of alternatives therefor or other appropriate relief in order to achieve an equitable and appropriate remedy.

2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 794 of this title.

(b) In any action or proceeding to enforce or charge a violation of a provision of this subchapter,

the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

(Pub. L. 93-112, title V, Sec. 505, as added Pub. L. 95-602, title I, Sec. 120(a), Nov. 6, 1978, 92 Stat. 2982.)

References in Text

The Civil Rights Act of 1964, referred to in subsec. (a)(2), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (Sec. 2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

Section Referred to in Other Sections

This section is referred to in section 794d of this title; title 2 section 1311; title 3 section 411; title 22 section 3905; title 42 sections 1981a, 10406, 12133.

TITLE 42—THE PUBLIC HEALTH AND WELFARE

CHAPTER 126—EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

Sec. 12209. Instrumentalities of Congress

The General Accounting Office, the Government Printing Office, and the Library of Congress shall be covered as follows:

(1) In general

The rights and protections under this chapter shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) Establishment of remedies and procedures by instrumentalities

The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1).

(3) Report to Congress

The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to

the Congress a report describing the remedies and procedures.

(4) Definition of instrumentalities

For purposes of this section, the term "instrumentality of the Congress" means the following:,\1\ the General Accounting Office, the Government Printing Office, and the Library of Congress,.\1\

\1\ So in original. The comma probably should not appear.

(5) Enforcement of employment rights

The remedies and procedures set forth in section 2000e-16 of this title shall be available to any employee of an instrumentality of the Congress who alleges a violation of the rights and protections under sections 12112 through 12114 of this title that are made applicable by this section, except that the authorities of the Equal Employment Opportunity Commission shall be exercised by the chief official of the instrumentality of the Congress.

(6) Enforcement of rights to **public** services and accommodations

The remedies and procedures set forth in section 2000e-16 of this title shall be available to any qualified person with a disability who is a visitor, guest, or patron of an instrumentality of Congress and who alleges a violation of the rights and protections under sections 12131 through 12150 of

this title or section 12182 or 12183 of this title that are made applicable by this section, except that the authorities of the Equal Employment Opportunity Commission shall be exercised by the chief official of the instrumentality of the Congress.

(7) Construction

Nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel Act of 1980 and regulations promulgated pursuant to that Act.

(Pub. L. 101-336, title V, Sec. 509, July 26, 1990, 104 Stat. 373; Pub. L. 102-166, title III, Sec. 315, Nov. 21, 1991, 105 Stat. 1095; Pub. L. 104-1, title II, Sees. 201(c)(3), 210(g), Jan. 23, 1995, 109 Stat. 8, 16.)

References in Text

The General Accounting office Personnel Act of 1980, referred to in par. (7), is Pub. L. 96-191, Feb. 15, 1980, 94 Stat. 27, which was classified principally to section 52-1 et seq. of former Title 31, and which was substantially repealed by Pub. L. 97-258, Sec. 5(b), Sept. 13, 1982, 96 Stat. 1068, and reenacted by the first section thereof principally in subchapters III (Sec. 731 et seq.) and IV (Sec. 751 et seq.) of chapter 7 of Title 31, Money and Finance.

Amendments

1995—Pub. L. 104-1, Sec. 201(c)(3)(F), amended section catchline generally.

Pub. L. 104-1, Sec. 201(c) (3) (A), struck out subsecs. (a) and (b) which related to coverage of Senate and House of Representatives with respect to bans on employment discrimination and other discriminatory practices against individuals with disabilities.

Pub. L. 104-1, Sec. 201(c)(3)(B), substituted "The General Accounting Office, the Government Printing Office, and the Library of Congress shall be covered as follows:" for subsec. (c) heading and designated subsec. (c) as entire section.

Par. (2). Pub. L. 104-1, Sec. 201 (c) (3) (C), struck out at end ' remedies and procedures shall apply exclusively, except for the employees who are defined as Senate employees, in section 1201(c)(1) of title 2."

Par. (4). Pub. L. 104-1, Sec. 201 (c) (3) (D), struck out "the Architect of the Capitol, the Congressional Budget Office" after "the following: ", inserted "and" before "the Library of Congress", and struck out "the Office of Technology Assessment, and the United States Botanic Garden" before period at end.

Pub. L. 104-1, Sec. 201(c)(3)(D), which in part directed the substitution of "the term "instrumentality of the Congress' means" for "the instrumentalities of the Congress include", was executed by making the substitution for

"instrumentalities of the Congress include" to reflect the probable intent of Congress.

Par. (5). Pub. L. 104-1, Sec. 201(c) (3) (E) , added par. (5). Former par. (5) redesignated (7).

Par. (6). Pub. L. 104-1, Sec. 210(g), which directed amendment of this section by adding par. (6), was executed by adding par. (6) after par. (5) to reflect the probable intent of Congress.

Par. (7). Pub. L. 104-1, Sec. 201 (c)(3) (E), redesignated par. (5) as (7) .

1991—Subsec. (a)(2). Pub. L. 102-166, Sec. 315(1), redesignated par. (6) as (2) and struck out former par. (2) which read as follows: "Application to Senate employment.—The rights and protections provided pursuant to this chapter, the Civil Rights Act of 1990 (S. 2104, 101st Congress), the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.], the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621 et seq.], and the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] shall apply with respect to employment by the United States Senate."

Subsec. (a)(3). Pub. L. 102-166, Sec. 315(1), redesignated par. (7) as (3), substituted " (2)(A)" for "(2) and (6) (A) ' • and "(2)" for "(3), (4), (5), (6)(B), and (6)(C)", and struck out former par. (3) which read as follows: "Investigation and adjudication of claims.—All claims raised by any individual with respect to senate employment, pursuant to the Acts referred to in paragraph (2), shall be investigated and adjudicated by the Select Committee on Ethics,

pursuant to S. Res. 338, 88th Congress, as amended, or such other entity as the Senate may designate."

Subsec. (a)(4), (5). Pub. L. 102-166, Sec. 315(1), struck out pars. (4) and (5) which read as follows:

"(4) Rights of employees.--The Committee on Rules and Administration shall ensure that Senate employees are informed of their rights under the Acts referred to in paragraph (2).

"(5) Applicable Remedies.—When assigning remedies to individuals found to have a valid claim under the Acts referred to in paragraph (2), the Select Committee on Ethics, or such other entity as the Senate may designate, should to the extent practicable apply the same remedies applicable to all other employees covered by the Acts referred to in paragraph (2). Such remedies shall apply exclusively. "

Subsec. (a)(6), (7). Pub. L. 102-166, Sec. 315(1), redesignated pars. (6) and (7) as (2) and (3), respectively.

Subsec. (c)(2). Pub. L. 102-166, Sec. 315(2), inserted ", except for the employees who are defined as Senate employees, in section 1201(c)(1) of title 2" after "shall apply exclusively".

Effective Date of 1995 Amendment

Amendment by section 201(c)(3) of Pub. L. 104-1 effective 1 year after Jan. 23, 1995, see section 1311(d) of Title 2, The Congress.

Amendment by section 210(g) of Pub. L. 104-1 effective 1 year after transmission to Congress of study under section 1371 of Title 2, see section 1331(h)(2) of Title 2.

Effective Date of 1991 Amendment

Amendment by Pub. L. 102-166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102-166, set out as a note under section 1981 of this title.

Section Referred to in Other Sections

This section is referred to in title 2 section 1435.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CATHERINE VICTORIA COLLINS
9290 Bay View Place
Nanjemoy, MD 20662

v.

BRUCE R. JAMES, PUBLIC PRINTER
U.S. Government Printing Office
732 North Capital Street, N.W.
Washington, DC 20401

CASE NUMBER: 1:04CV00088
JUDGE: John D. Bates
DECK TYPE: Employment Disrimination
DATE STAMP: 01-20-2004

COMPLAINT
(Disability Discrimination)

NATURE OF ACTION

Plaintiff CATHERINE VICTORIA COLLINS ("Mrs. Collins" or "Plaintiff"), by and through her attorney of record, hereby 'brings this action to correct unlawful employment practices on the "basis of disability and to obtain appropriate relief to. Plaintiff under the Rehabilitation Act of 1973. Specifically, and as alleged--with, greater particularity in paragraphs 8 through 14, Defendant BRUCE R. JAMES, in his official capacity as Public Printer, U.S. GOVERNMENT PRINTING OFFICE ("GPO"

or "Agency"), by and through his agents, employees, and representatives, discriminated against Plaintiff because of her disability and refused to provide a-reasonable accommodation for her disability.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Section-505 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794a, and Section 706 of the Civil Eights Act of 1964, as amended, 42 U.S.C. §2000e-5.

2. Tie employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of Columbia.

PARTIES

3. Plaintiff CATHERINE VICTORIA COLLINS ("Mrs. Collins")[1] is an adult resident of St Mary's County, Maryland. She is a current employee of "fee Defendant GPO but is presently on disability leave.

4 Defendant BRUCE R. JAMES, PUBLIC PRINTER, in his official capacity as head of the U.S. Government Printing Office, a federal agency, is an. employer within the meaning of the Rehabilitation Act of 1973, as amended.

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[1] Plaintiff, now married, was known as Catherine Victoria Moss at the time of the events described in this compliant.

STATEMENT OF CLAIMS

5. More than thirty (30) days prior to the institution of this lawsuit, plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission alleging violations- of the Rehabilitation Act of *1*974 by Defendant Agency. AH conditions precedent to the institution of this lawsuit have been fulfilled.

6. Plaintiff began "working &r GPO in 1994 as a secretary.

7. On or about May or June 2000, Plaintiff became a Printing Plant Worker,KA-4402-3.

8. Plaintiff suffered an on-the-job injury in August 2000. This injury was diagnosed as a severe cervical strain, limiting certain major life activities of Plaintiff Specifically, the cervical strain impeded Plaintiffs ability to walk, stand, and lift.

9. With reasonable accommodation, Plaintiff is a qualified person with a disability.

10. In September 20GQ, Plaintiff's physician advised Plaintiff that she could return to work with, a reasonable accommodation to perform only light duty. Plaintiff's physician communicated this accommodation to GPO.

11. Assured that Plaintiff would be placed in a general clerical position as light duly, Plaintiffs physician released Plaintiff £o return to work.

12. On or about September 19, 2000, Plaintiff returned to work. Plaintiff was immediately placed on a collating machine. Plaintiff inquired about her reasonable accommodation of light duty, but was informed that she must work at the collating machine.

13. The Agency's refusal to provide a reasonable accommodation to Plaintiff exacerbated her existing injury, farther damaging her spine and worsening her disability.

14. Defendant GPO has engaged in unlawful employment practices in violation of the Rehabilitation. Act of 1974, by discriminating against Plaintiff based on her disability. The unlawful employment practices include, but are not limited to, the following;

a. Refusing to comply with, the limitations on Plaintiffs duty

b. Refusing to assign Plaintiff to a general clerical or other light duty position;

c. Denying Plaintiff the opportunity to speak with a .management official regarding her request for reasonable accommodation; and

d. Withholding required paperwork to support Plaintiffs disability claim.

15. The effect of the practices complained of in paragraphs 8 through 14 above has been to deprive Plaintiff of equal employment opportunities

and otherwise adversely affect the terms and conditions other employment because of her disability.

16. The unlawful employment practices complained, of in paragraphs 8 through 14 above were intentional

17. The unlawful employment practices complained of in paragraphs 8 through 14 above were done with malice or-with reckless indifference to the federally- protected rights of the Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Grant a permanent injunction enjoining Defendant. GPO, its commissioners, officers, successors, assigns, and all persons in active concert or participation -with it, from engaging in disability discrimination and any other employment practice which discriminates on the basis of disability;

B. Order Defendant GPO to institute and carry out policies, practices;, and programs which provide equal employment opportunities for employees regarding disability and reasonable accommodation that eradicate the effects of its past and present unlawful employment practices;

C. Order Defendant GPO to make Ms. Coffins whole, by providing appropriate back pay with prejudgment interest, in amounts to be

determined at trial, and other affirmative relief necessary (including front pay) to eradicate the effects of its unlawful employment practices;

D. Order Defendant GPO to make Ms. Collins whole, by providing compensation for past and future pecuniary losses resulting from, the unlawful employment practices described in paragraphs 8 through 14, including medical expenses, in amounts to be determined at trial;

E. Order Defendant GPO to make Ma. Collins whole, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraphs 8 through. 14 above, including emotional pain and suffering depression, anxiety, inconvenience, loss of enjoyment of life, and humiliation, in amounts/to be determined at trial;

F. Award Plaintiff her costs of this action;

G. Grant such further relief as the Court deems necessary and proper in the public interest.

JURY DEMAND

Plaintiff hereby requests a trial by jury in this matter.

Respectfully submitted,

/s/
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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CATHERINE VICTORIA COLLINS,

Plaintiff,

v. **Civil Action No. 04-0088 (JDB)**

ECF

BRUCE R. JAMES, PUBLIC PRINTER,
U.S. GOVERNMENT PRINTING OFFICE,

Defendant.

DEFENDANT'S MOTION TO DISMISS

Defendant, by and through his undersigned counsel, files his Motion to Dismiss under Fed. R. of Civ. P. Rules 12(b)(1) for lack of jurisdiction over the subject matter. Accordingly, Defendant requests that Plaintiff's Complaint be dismissed with

prejudice. Exhibits 1 through 7 in support of this Motion[1] and a proposed order are attached hereto.

INTRODUCTION

Plaintiff brings this action against the Government Printing Office "pursuant to Section 505 of the Rehabilitation Act" (29 U.S.C. § 791, *et seq.)*. Complaint ¶¶ 1, 4, 5, 14.

The Government Printing Office ("GPO") is an entity of the legislative branch of the federal government, which is not subject to the provisions of the Rehabilitation Act. Therefore, this Court is without subject matter jurisdiction and Plaintiff's Complaint should be dismissed.

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[1] Defendants attach and rely on certain documents outside of the pleadings for the limited purpose of allowing the Court to determine whether it has jurisdiction over Plaintiff's claims. It is well established that, in order to make such a determination, the Court may rely upon extraneous evidence without converting the motion into one for summary judgment. Land v. Dollar, 330 U.S. 731, 735 n.4 (1947); Herbert v. National Academy of Sciences, 974 F.2d 192, 197-98 (D.C. Cir. 1992). On a motion to dismiss pursuant to Rule 12(b)(1), the plaintiff bears the burden of persuasion to establish subject-matter jurisdiction by a preponderance of the evidence. In determining whether the plaintiff has met this burden, the Court is sometimes required to look to matters outside of the pleadings. Thompson v. Capitol Police Bd., 120 F..Supp.2d 78, 81-82 (D.D.C. 2000) (discrimination case) *citing,* In Re: Swine Flu Immunization Products Liability Litigation (Kenneda v. United States), 880 F.2d 1439, 1442 (D.C. Cir. 1989); *accord,* Battle v. Rubin, 121 F.Supp.2d 4, 6 (D.D.C. 2000).

BACKGROUND

In August 2000, within two months of beginning work as a Printing Plant Worker in the GPO, Plaintiff suffered a work-related cervical strain injury and stayed off work for approximately one month. Compl. ¶¶ 7, 8, 10; Def. Exh. 1. Plaintiff returned to work on September 19, 2000, but her medical provider only released her for light-duty work, and Plaintiff was assigned to work as a collator. Compl. ¶¶ 10, 12; Def. Exh. 2. Plaintiff has not worked at GPO since September 21, 2004.[2]

ARGUMENT

DEFENDANT IS NOT SUBJECT TO THE REHABILITATION ACT

Plaintiff alleges violations of the Rehabilitation Act. Compl. ¶¶ 1, 4, 5, 14. Specifically, she alleges that "Defendant GPO has engaged in unlawful employment practices in violation of the Rehabilitation Act of 1974" by refusing to comply with "the limitations" on Plaintiffs duty assignment, refusing to assign Plaintiff to a light-duty position, denying Plaintiff

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[2] As a matter of context but not material to jurisdiction under the Rehabilitation Act, on September 20, 2000, plaintiff requested and was granted 8 hours of sick leave. Def. Exh. 3. On plaintiffs second day back to work, September 21, 2000, she was again assigned to collating duties; however, she did not work the .entire shift, but asked to go to the Medical Section, which was permitted by her supervisor. Def. Exh. 4. Plaintiff was eventually sent home on that date and she has not returned to work at GPO.

the opportunity to speak with management officials regarding her request for a reasonable accommodation, and withholding required paperwork for her disability claim. *See generally* Complaint.

Disability discrimination complaints against Federal executive branch agencies are covered by the Rehabilitation Act of 1973, 29 U.S.C. § 791, *et seq*. Specifically, "[e]ach department, agency, and instrumentality (including the United States Postal Service and the Postal Rate Commission) **in the executive branch**" is within the purview of the Rehabilitation Act. 29 U.S.C. §791(b) (emphasis added). Defendant does not challenge the Rehabilitation Act's applicability to the executive branch; however, the GPO is a legislative branch agency. *See* Thompson v. Sawyer, 678 F.2d 257, 264 (D.C.Cir. 1982). As such, the GPO is not subject to the provisions of the Rehabilitation Act. *See* United States v. Allison, 91 U.S. 303, 307 (1878) ([Superintendent of Public Printing] is not under the control of any one of the executive departments); Judd v. Billington, 863 F.2d 103, 104-105 (D.C. Cir. 1988) (Rehabilitation Act does not apply to the Library of Congress because it is part of the legislative branch). *See also* Barbour v. Jenifer, No. 89-0657, Slip op. at 6 (D.D.C., June 25, 1990).[3]

While the Congressional Accountability Act ("CAA") extended rights under the Rehabilitation

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[3] For the convenience of the Court and Plaintiff, a copy of Barbour v. Jenifer, attached at Def. Exh. 5.

Act to employees of specified legislative branch agencies (*see* 2 U.S.C. § 1302(a)(10)), as prescribed by the explicit language of the Act, GPO employees are not "covered employees" for the purposes of the Congressional Accountability Act. *See* 2 U.S.C. § 1301(3).[4] Consequently, there is no jurisdiction for GPO employees to maintain a cause of action under the Rehabilitation Act.

CONCLUSION

Plaintiff's Complaint clearly and solely alleges jurisdiction and violations of the Rehabilitation Act. The Rehabilitation Act is inapplicable to the Defendant as an agency of the legislative branch that is not "covered" by the Congressional Accountability Act. Consequently, this Court is without jurisdiction and Plaintiff cannot maintain a cause of action against the GPO under the Rehabilitation Act.

Therefore, as a matter of law Plaintiff's Complaint must be dismissed.

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[4] Despite the absence of GPO from the list of legislative agencies covered by the CAA, the EEOC's recent amendments to regulations found at 29 C.F.R. § 1614.103(b)(6) incorrectly designate GPO as being subject to the Rehabilitation Act GPO has advised EEOC of its objection to this designation. Def. Exh. 6. In response, the EEOC has agreed with the GPO analysis and assured GPO that it will propose an appropriate amendment when it next considers changes to 29 C.F.R. Part 1614. Def. Exh. 7.

Respectfully submitted,

/s/
ROSCOE C. HOWARD, JR.,
D.C. Bar # 246470
United States Attorney

/s/
MARKE. NAGLE,
D.C. Bar #416364
Assistant United States Attorney

/s/
ULDRIC L. FIORE, JR.,
DC Bar #386152
Assistant United States Attorney
Judiciary Center Building
555 Fourth St., N.W., Rm 10-114
Washington, D.C. 20530
202-307-0299 / FAX 202-514-8780

Of Counsel:
Jennifer R. Seifert
Assistant General Counsel
U.S. Government Printing Office
732 North Capital Street, N.W.
Washington, D.C. 20401

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CATHERINE VICTORIA COLLINS,

Plaintiff

v. Civil Action No. 04-0088 (JDB)

BRUCE JAMES, Public Printer
U.S. Gov't Printing Office,

Defendant

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Plaintiff C. VICTORIA COLLINS, by and through counsel, hereby files her opposition to Defendant's Motion to Dismiss for Lack of Jurisdiction, and states as follows:

I. PROCEDURAL BACKGROUND

On or about December 7, 2000, Plaintiff filed a formal complaint of discrimination with the EEO office within the U.S. Government Printing Office (GPO) following the unsuccessful resolution of her informal complaint. (Exhibit A) This complaint alleged discrimination based on handicap and the failure to provide a reasonable accommodation. See Exhibit B, Letter from GPO dated April 27, 2001, regarding issues accepted for investigation. Plaintiff requested a hearing before the Equal Employment Opportunity Commission. Exhibit C. GPO

investigated Plaintiffs complaint and issued its Report of Investigation on or about April 8, 2002. (Exhibit D, cover letter transmitting ROI) On or about May 27, 2003, the EEOC issued a Notice of Intent to Issue a Final Decision Without a Hearing to which both parties filed a response to the Commission's Notice. Each party also filed a reply to the other's response. On or about September 16, 2003, the Commission issued its decision (Exhibit E), finding *inter alia* that the GPO had not "failed in any of its obligations under the Rehabilitation Act." The GPO issued its final agency decision, fully implementing the decision of the administrative judge. Exhibit F. Plaintiff received the final agency decision on or about October 21, 2003. Plaintiff timely filed the instant action on January 19, 2004.

II. STANDARD OF REVIEW

In considering a 12(b)(1) motion to dismiss, plaintiff bears the burden of proving that federal subject matter jurisdiction is proper. *Walker* v. *U.S. Department of the Army,* 60 F. Supp. 553, 555 (E.D. Va. 1999) (citing *McNutt* v. *General Motors Acceptance Corp.,* 298 U.S. 178, 189 (1936)). A defendant may present a 12(b)(1) motion to dismiss in one of two ways, either on the face of the complaint or on the basis of evidence apart from the pleadings. *Walker* v. *U.S. Dept. of the Army,* 60 F. Supp. at 555-556; *Duncan* v. *Washington Metropolitan Area Transit Authority,* 214 F.R.D. 43, 45 (D.D.C. 2003). The Court is not limited to the allegations in the complaint but may consider materials outside the complaint to determine

whether it has jurisdiction in the case. *Duncan* v. *WMATA*, 214F.R.D. at 45.

III. ARGUMENT

The Government Printing Office is Subject to the Rehabilitation Act

Defendant asserts that it is not subject to the provisions of the Rehabilitation Act because it is not an executive agency,. but a legislative one. See Defendant's Motion to Dismiss, at pg. 3. Nonetheless, Defendant presents itself to its employees as bound by the anti-discrimination policies set forth in the Rehabilitation Act. Exhibit A, EEO Complaint form; Exhibit G, Sample GPO Job Vacancy Announcement. Its EEO office similarly processes complaints under the provisions of the Rehabilitation Act. See Exhibit A. The EEOC similarly processes the disability complaints of GPO employees. See Exhibit E. Consequently, it is not difficult *to* see why a GPO employee would believe himself or herself to be protected by the very federal laws they print and disseminate.

Nonetheless, Plaintiff disagrees with Defendant's interpretation of GPO's accountability, despite the public policy issues Defendant's argument raises. While GPO is indeed "an instrumentality of Congress," it is, in fact, subject to the provisions of the Rehabilitation Act of 1973, as well as the provisions of the Americans with Disabilities Act of 1990. The Congressional Accountability Act ("CAA") extended rights under the Americans with Disabilities Act of 1990 and the

Rehabilitation Act of 1973 to the legislative branch of the Federal Government:

> *The following laws shall apply. . . to the legislative branch of the Federal Government... (3) The Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq.) ... (10) The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.). . .*

2 U.S.C. §1302(a). Congressional intent to impose the prohibition against discrimination based on disability and the remedies for violation of that prohibition on the Government Printing Office seems clear. *See* Public Law 104-1, Title II, Part A, Sec. 201(c) Application to General Accounting Office, Government Printing Office, and Library of Congress, 109 STAT. 8 (January 23, 1995)(Exhibit H).

These provisions became effective on January 23, 1995. Plaintiff filed her EEO complaint on or about December 7, 2000, after the effective date of the provisions extending anti-discrimination protection to the employees of Defendant. Therefore, subject matter jurisdiction not only existed at the time she filed her claim in 2000, but also at the time she filed the instant suit. *See Arnold v. District of Columbia,* 211 F. Supp. 144, 146 (D.D.C. 2002)(dismissal under 12(b)(l) is not appropriate where subject matter jurisdiction existed on the date that the lawsuit was filed).

WHEREFORE, Plaintiff respectfully requests that Defendant's motion to dismiss be denied. In the

alternative, Plaintiff requests leave to amend her complaint to state with greater accuracy the basis for subject matter jurisdiction. Plaintiff requests such other relief as the Court may deem appropriate.

Respectfully submitted,

/s/

Lisa Smith Sanders, Esq.
DC Bar No. 417142
Sanders & Sanders
14452 Old Mill Road, Suite 101
P.O. Box 1429
Upper Marlboro, MD 20773
301.574.1338 voice
301.574.1435 fax
lisa.sanders@sanderslawfirm.net

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of June, 2004, a copy of the foregoing Plaintiff's Opposition to Defendant's Motion to Dismiss was sent via electronic mail notification to the following attorney(s) of record:

Roscoe C. Howard, Jr., U.S. Attorney
Mark E. Nagle, Asst. U.S. Attorney
Uldric L. Fiore, Jr., Asst. U.S. Attorney
Judiciary Center Building
555 Fourth Street, N.W., Room 10-114
Washington, D.C. 20530

/s/

Lisa Smith Sanders, Esq.

COMPLAINT OF DISCRIMINATION IN THE FEDERAL GOVERNMENT
BECAUSE OF RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, AGE, OR HANDICAP
(Please Type or Print)

(FOR AGENCY USE) 01-10

1. WHAT IS YOUR (COMPLAINANT'S) FULL NAME?
Catherine Victoria Moss

2. WHAT IS YOUR TELEPHONE NUMBER INCLUDING AREA CODE?
HOME PHONE: 301-843-3477
WORK PHONE:

YOUR STREET ADDRESS (OR RD NUMBER OR POST OFFICE BOX NUMBER)
11507 Timberbrook Drive

YOUR CITY: Waldorf STATE: MD ZIP CODE: 20601

3. WHICH FEDERAL OFFICE DO YOU BELIEVE DISCRIMINATED AGAINST YOU? (Please a separate complaint form for each office which you believe discriminated against you.)

A. NAME OF OFFICE WHICH YOU BELIEVE DISCRIMINATED AGAINST YOU:
Government Printing Office

B. STREET ADDRESS OF OFFICE:
North Capitol and H Street NW

C. CITY: WASHINGTON D.C. STATE ZIP CODE: 20401

D. NAME AND TITLE OF PERSON(S) YOU BELIEVE DISCRIMINATED AGAINST YOU (If you know):

4. ARE YOU NOW WORKING FOR THE FEDERAL GOVERNMENT?
☑ YES (ANSWER A, B, C AND D BELOW.)
☐ NO (CONTINUE WITH QUESTION 5.)

A. NAME OF AGENCY WHERE YOU WORK:
Government Printing Office

B. STREET ADDRESS OF YOUR AGENCY:
North Capitol and H Street NW

C. CITY: Washington D.C. STATE ZIP CODE: 20401

D. WHAT IS THE TITLE AND GRADE OF YOUR JOB?
Printing Plant Worker Premium 3

5. DATE ON WHICH MOST RECENT ALLEGED DISCRIMINATION TOOK PLACE:
MONTH: 09 DAY: 19 YEAR: 00

6. CHECK BELOW WHY YOU BELIEVE YOU WERE DISCRIMINATED AGAINST, BECAUSE OF YOUR:
☑ HANDICAP, IF SO, STATE YOUR HANDICAP: Spine injury Sciatica
☐ RACE, IF SO, STATE YOUR RACE
☐ COLOR, IF SO, STATE YOUR COLOR
☐ RELIGION, IF SO, STATE YOUR RELIGION
☐ NATIONAL ORIGIN, IF SO, STATE YOUR NATIONAL ORIGIN
☐ SEX, IF SO, STATE YOUR SEX
☐ AGE, IF SO, STATE YOUR AGE
(Complaints of discrimination because of age apply only to employees or applicants who are at least 40 years of age at the time the discriminatory action is alleged to have occurred.)

2000 DEC 11 PM 1:11 POSTSERVICE

7. EXPLAIN HOW YOU BELIEVE YOU WERE DISCRIMINATED AGAINST (TREATED DIFFERENTLY FROM OTHER EMPLOYEES OR APPLICANTS) BECAUSE OF YOUR RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, AGE OR HANDICAP. (For each allegation, please state to the best of your knowledge, information and belief what incident occurred and when the incident occurred. You may continue your comments on another sheet of paper if you need more space.)
On the date indicated in question 5, my immediate supervisor forced me to perform job duties outside my doctor's work restriction resulting in an aggravation of my pre existing back condition

8. (A) I HAVE DISCUSSED MY COMPLAINT WITH AN EQUAL EMPLOYMENT OPPORTUNITY COUNSELOR (See instructions)
☑ YES ☐ NO

8. (B) NAME OF COUNSELOR:
Albertha Broadnax

9. WHAT CORRECTIVE ACTION ARE YOU SEEKING?
Reasonable Accommodation - Compensatory/DAMAGES - attorney fees - Compensatory damages - consequential damages

10. NAME AND TITLE OF PERSON(S) REPRESENTING YOU IN THE PROCESSING OF THIS COMPLAINT:
Stephen SHAVITZ
ADDRESS: 380 Maple Ave West Suite 207 Vienna VA 22180
TELEPHONE NUMBER: 703-319-8770

11. DATE OF THIS COMPLAINT
MONTH: 12 DAY: 7 YEAR: 00

12. SIGN YOUR (COMPLAINANT'S) NAME HERE:
Catherine Victoria Moss

FORMAL COMPLAINT PAGE 1 OF 3

SEE REVERSE SIDE OF FORM FOR INSTRUCTIONS

GPO Form 926
(7-99)

EEO COUNSELING REPORT – INDIVIDUAL COMPLAINT

PART I (Through initial interview)

(Use a continuation sheet if necessary)

Employee or Applicant: Name, Business/Home Address
Catherine Victoria Moss

Date Counseling First Sought
10/26/00

Employee: Official Title and Grade
Printing Plant Worker Pos. Grade 3

Date of First Interview
11/8/00

EEO Counselor's Name
Albertha M Broadnax

Basis or Type of Discrimination

- ☐ Age — Date of Birth: ____ DAMY
- ☐ Religion
- ☐ Color
- ☐ Race
- ☐ National Origin
- ☐ Sex
- ☒ Other
- ☐ Retaliation/ Reprisal for Involvement in Complaints Process

Handicap
- ☐ Mental
- ☒ Physical

Matter Causing Complaint or Issue

- ☐ Appointment
- ☐ Assignment of Duties
- ☐ Awards
- ☐ Change to Lower Grade
- ☐ Classification
- ☐ Conv to FT (S)
- ☐ Duty Hours
- ☐ Evaluation/Appraisal
- ☐ Exam/Test
- ☐ Harassment
- ☐ Overtime
- ☐ Pay
- ☐ Promotion
- ☐ Reassignment
- ☐ Reinstatement
- ☐ Removal/ Separation
- ☐ Reprimand
- ☐ Resignation
- ☐ Retirement
- ☐ Sexual Harassment
- ☐ Suspension
- ☐ Termination During Probation
- ☐ Time/Attendance
- ☐ Training
- ☐ Within Grade Increase
- ☒ Working Conditions
- ☐ Other (Explain)

An EEO Counselor cannot reveal the identity of a person who has come for counseling, except when authorized to do so by the person counseled. Is Complainant willing to have his/her name revealed during the counseling stage? Yes ☒ No ☐ If answer is "Yes," Complainant must give permission by signing name in the space following:

Catherine Victoria Moss

Signature of Complainant

Organization Where Alleged Discrimination Occurred and Date of Occurrence
Binding Room 10/26/00

Give date Complainant became aware of alleged discrimination if substantially different from that shown above. Explain.

If complaint appears to be untimely, what explanation is offered to explain why Counselor was not contacted within 45 days?

Provide a brief description of complaint, summarizing actions which caused counseling to be sought and which complainant believes are discriminatory. Upon returning to work after 1st injury supervisor did not place me on light duty work as dictated on letter dated August 25, 2000 causing a 2nd injury.

Remedial Action Desired by Complainant To have absent attendance changed to SEF (September 19, 2000 to November 3, 2000). Request to be paid for those work days.

Robert N. Moss

On the same matter has Complainant filed a grievance under a negotiated grievance procedure? Yes ☐ No ☒
Under the Agency grievance system? Yes ☐ No ☒
Has Complainant appealed to the Merit Systems Protection Board? Yes ☐ No ☒
If grievance or appeal has been filed, what is its status?

Does Complainant elect to have a representative?
Yes ☒ No ☐

Signature of Counselor and Date Signed
Albertha M Broadnax
11-21-00

FORMAL COMPLAINT
PAGE 2 OF 3

DESIGNATION OF REPRESENTATIVE

I hereby appoint the following named individual as my Representative:

Stephen Seavizzo 703-319-

Name Telephone Number

Address (Number and Street)

Vienna VA

City State Zip Code

I have discussed with my Representative his/her authorization to represent me in connection with any and all my currently pending complaints of discrimination. Unless indicated otherwise, my Representative is authorized to:

1. Appear, assist and counsel me in the preparation of my complaint of discrimination.
2. Appear for me or with me at hearings or other proceeding when his/her presence is authorized by regulation; and
3. Receive any information concerning my complaint of discrimination, including correspondence, copies of documents, reports of investigations, or reports of hearings to which I am entitled under regulation pertaining to complaints of discrimination.
4. Negotiate and finally resolve, adjust and/or settle any and all of my complaints of discrimination.

Catherine Victoria Moss 11/9/00

Signature Date

Catherine Victoria Moss

Print Name

1. This designation and limited power of attorney may be cancelled by the complainant or by the individual named above upon written notice to the EEO Office.
2. A subsequent designation and limited power of attorney, if properly executed on this, or similar form, and sent to the EEO Office automatically cancels a previous designation.
3. The complainant is responsible for notifying his/her representative and the GPO when the designation and limited power of attorney is cancelled.

FORMAL COMPLAINT
PAGE 3 OF 3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON FIELD OFFICE
1400 L Street, N.W., Suite 200
Washington, D.C. 20005

Catherine Moss,
Complainant,

EEOC Case No.
100-A2-7124X

v.

Agency Case No.
01-10

Government Printing Office,
Agency.

ORDER ENTERING JUDGMENT

For the reasons set forth in the enclosed Decision dated September 16, 2003, judgment in the above-captioned matter is hereby entered. A Notice To The Parties explaining their appeal rights is attached.

This office is also enclosing a copy of the hearing record for the agency.

This office will hold the report of investigation and the complaint file for sixty days, during which time the agency may arrange for their retrieval. If we do not hear from the agency within sixty days, we will destroy our copy of these materials.

It is so ORDERED.

For the Commission: /s/
Rachel E. Schneider
Administrative Judge

Enclosures

To:[1]

Lisa Smith Sanders, Esq.
14452 Old Mill Road, Suite 101
P.O. Box 1429
Upper Marlboro, Md. 20773

Jennifer Fantuz, Esq.
Office of the General Counsel
U.S. Government Printing Office
732 North Capitol Street, N. W., Stop GC
Washington, D.C. 20401

Director, Office of Equal Employment Opportunity
U.S. Government Printing Office
732 North Capitol Street, N.W.
Room C-709
Washington, D.C. 20401

[1] The Commission has no mailing address for Complainant. In the *Notice of Intent to Issue A Decision Without A Hearing,* Complainant's attorney was told to provide a mailing address for Complainant, but she failed to do so.

NOTICE TO THE PARTIES

TO THE AGENCY:

Within forty (40) days of receiving this decision and the hearing record, you are required to issue a final order notifying the complainant whether or not you will fully implement this decision. You should also send a copy of your final order to the Administrative Judge.

Your final order must contain a notice of the complainant's right to appeal to the Office of Federal Operations, the right to file a civil action in a federal district court, the name of the proper defendant in any such lawsuit, the right to request the appointment of counsel and waiver of court costs or fees, and the applicable time limits for such appeal or lawsuit, A copy of EEOC Form 573 (Notice of Appeal/Petition) must be attached to your final order.

If your final order does not fully implement this decision, you must simultaneously file an appeal with the Office of Federal Operations in accordance with 29 C.F.R. 1614.403, and append a copy of your appeal to your final order. *See* EEOC Management Directive 110, November 9, 1999, Appendix O. You must also comply with the Interim Relief regulation set forth at 29 C.F.R, § 1614.505.

TO THE COMPLAINANT:

You may file an appeal with the Commission's Office of Federal Operations when you receive a final order

from the agency informing you whether the agency will or will not fully implement this decision. 29 C.F.R. § 1614.110(a). From the time you receive the agency's final order, you will have thirty (30) days to file an appeal. If the agency fails to issue a final order, you have the right to file your own appeal any time after the conclusion of the agency's (40) day period for issuing a final order. *See* EEO MD-110,9-3. In either case, please attach a copy of this decision with your appeal.

Do not send your appeal to the Administrative Judge. Your appeal must be filed with the- Office of Federal Operations at the address set forth below, and you must send a copy of your appeal to the agency at the same time that you file it with the Office of Federal Operations. In or attached to your appeal to the Office of Federal Operations, you must certify the date and method by which you sent a copy of your appeal to the agency.

WHERE TO FILE AN APPEAL:

All appeals to the Commission must be filed by mail, hand delivery or facsimile.

BY MAIL:

Director, Office of Federal Operations
Equal Employment Opportunity Commission
P.O. Box 19848
Washington, D.C. 20036

BY PERSONAL DELIVERY:

Director, Office of Federal Operations
Equal Employment Opportunity Commission
1801 L Street, NW
Washington, D.C. 20507

BY FACSIMILE:

Number: (202) 663-7022

Facsimile transmissions of more than ten (10) pages will not be accepted

COMPLIANCE WITH AN AGENCY FINAL ACTION

Pursuant to 29 C.F.R. § 1614.504, an agency's final action that has not been the subject of an appeal to the Commission or a civil action is binding on the agency. If the complainant believes that the agency has failed to comply with the terms of this decision, the complainant shall notify the agency's EEO Director, in writing, of the alleged noncompliance within 30 days of when the complainant knew or should have known of the alleged noncompliance. The agency shall resolve the matter and respond to the complainant in writing. If the agency has not responded to the complainant, in writing, or if the complainant is not satisfied with the agency's attempt to resolve the matter, the complainant may appeal to the Commission for a determination of whether the agency has complied with the terms of its final action. The complainant may file such an appeal 35 days after serving the agency with the

allegations of non-compliance, but must file an appeal within 30 days of receiving the agency's determination. A copy of the appeal must be served on the agency, and the agency may submit a response to the Commission within 30 days of receiving the notice of appeal.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON FIELD OFFICE
1400 L Street, N.W., Suite 200
Washington, D.C. 20005

Catherine Moss,
Complainant,

EEOC Case No.
100-A2-7124X

v.

Agency Case No.
01-10

Government Printing Office,
Agency.

DECISION

This Decision is issued pursuant to 29 C.P.R. § 1614,109(g) (2001), On August 22,2001, the Commission received a request for a hearing for the Complainant. On May 27, 2003, the Commission issued an order pursuant to 29 C.F.R. § 1614.109(g) explaining the legal standards for summary

judgment.[1] The record before me consists of the Report of Investigation ("ROI"), the Agency's Response to Notice of Intent to Issue Decision Without A Hearing, the Complainant's Response, and each party's Reply to the other's Response.

The issue is whether the agency discriminated against the Complainant based on her disability (severe cervical strain) when she was allegedly required to perform duties outside those light duty functions provided and subsequently approved by her doctor. ROI, "Accepted Claim," at 4.

Complainant has satisfied the procedural prerequisites for a hearing, but the evidence does not warrant one. *Anderson* v. *Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio,* 475 U.S. 574, 587 (1986); *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986). I find that the Complainant has not shown that there are any issues requiring a hearing and therefore issue summary judgment in favor of the Agency.

FINDINGS AND ANALYSIS

The Agency has an obligation to make reasonable accommodation to the known disabilities of an employee. Here, Complainant was injured on the job, and was out on. sick leave for about one month. When she returned to work, she produced a

[1] The Commission's regulations are patterned after the procedures and guidelines for summary judgment set forth in the Federal Rule3 of Civil Procedure. *Pedersen v. Reno, Attorney General,* EEOC Request No 05943339 (Feb. 24,1995).

statement from her physician detailing the physical limitations of Complainant's work abilities.

In response, the Agency placed Complainant into a position as Collator, a position it considered light duty, and within the limitations described by Complainant's physician, Complainant worked for one day on that job, and took the next day off. On her next day back at work as a Collator, Complainant had a visitor, which seemed to reduce Complainant's attention to her work, and decreased her production. After her supervisor counseled her about having visitors while she was working, Complainant went to the medical office, complained about renewed pain, and left work. Agency Response, Ex. C. Complainant never returned to work.

Carolyn Ellerbe, a workers' compensation specialist, had suggested a desk job for Complainant, but was not aware whether there were any such jobs vacant ROI, Aff. 3 at 5. She also said that not all light duty jobs were desk jobs. *Id.* at 4. Complainant's supervisor, Edward Gunney, noted that there were no desk jobs in his work unit ROI, Aff. 4 at 8.

The Agency believed that the Collator position would be light enough duty to meet Complainant's medical restrictions. *See* ROI, Aff. 8, *passim.* Complainant did not object initially to working as a Collator because she had never performed that job before. ROI, Aff. 9 at 2. However, on her second day at work, she still did not complain lo her supervisor, or in any way express her concerns that the job she

was performing was not in conformance with her limitations.

According to Complainant, her injuries were so severe that surgery was required, an anterior cervical disc removal and an interbody fusion. She said the surgery could result in paralysis or death. ROI, Aff. 1 at 11. Also according to Complainant, the essential functions of her job included lifting, bending, hand feeding materials into and out of machinery, pushing and pulling a crane, and lifting congressional records and federal register books strapped in bundles. *Id* at 13. Her injuries have a significant impact on her major life activities of performing manual tasks, lifting *anything,* and bending. Complainant reported that the left side of her neck "felt like it was on fire." *Id* at 14,

Clearly Complainant was an employee with a disability. However, I cannot find that Complainant was a *qualified individual* with a disability. That is, there is no accommodation that could be made to enable Complainant to perform the essential functions of her position. Further, there is nothing in the record to show that there was a vacant position, to which she could be reassigned that met her physical limitations. Consequently, the Agency was not obligated to provide a reasonable accommodation to Complainant,

The Complainant has not proffered evidence from which I could conclude that the Agency discriminated against her, or failed in any of its obligations under the Rehabilitation Act The Agency is therefore entitled to summary judgment.

/s/
Richard E. Schneider
Administrative Judge

To:[2]

Lisa Smith Sanders, Esq.
14452 Old Mill Road, Suite 101
P.O. Box 1429
Upper Marlboro, Md. 20773

Jennifer Fantuz, Esq.
Office of the General Counsel
U.S. Government Printing Office
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Director, Office of Equal Employment Opportunity
U.S. Government Printing Office
732 North Capitol Street, N.W.
Room C-709
Washington, D.C. 20401

[2] The Commission has no mailing address for Complainant. In the *Notice of Intent to Issue A Decision Without A Hearing,* Complainant's attorney was told to provide a mailing address for Complainant, but she failed to do so.

GPO U.S. GOVERNMENT PRINTING OFFICE
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MERIT PROMOTION
VACANCY ANNOUNCEMENT

ANNOUNCEMENT NUMBER:	**04-107**
POSITION: Supervisory	**Plant Controller**
SERIES/GRADE:	**PG-0501-15**
SALARY RANGE:	**$100,231-$130,305**
ISSUE DATE:	**05-06-04**
CLOSING DATE:	**06-17-04**
NUMBER OF VACANCIES:	**One**
ORGANIZATION:	**Office of Finance and Administration** **Office of the Chief Financial Officer** **Shift 1**
GEOGRAPHIC LOCATION:	**Washington, DC**
PROMOTION POTENTIAL:	**PG-15**
DURATION OF APPOINTMENT:	**Permanent**
TOUR OF DUTY:	**Shift 1**
OPM NOTICE OF RESULTS REQUIRED:	**N/A**
CIVIL SERVICE STATUS REQUIRED:	**No**
AREA OF CONSIDERATION:	**All Sources**

SUMMARY OF DUTIES/RESPONSIBILITIES:
This position is that of Supervisory Plant Controller and is the top financial position in the business Unit The Supervisory Plant Controller will be the lead person for supporting the Business Unit Managing Director in all finance, budget, analysis, and expense matters. Responsible for monthly financial reporting and submission to be included in month, end agency finance reporting package. Responsible for Internal Control over financial resources. Develops the President's and the GPO's operating budget for the Plant in conjunction with the GPO's CFO, Comptroller and Budget Officer. Develops a capital budget and assists the Managing Director of the Plant in executing the plan. Prepares monthly financial projections and monitors billing process. Ensures die timeliness and accuracy of billings. Prepares and analyzes capital investment opportunities and proposals. Performs the full range of supervisory duties end in concert with the other supervisors/managers of the organization, sets, priorities and establishes objectives to achieve the goals of the Chief Financial Officer. Finds and implements ways to improve business practices and maximize efficiency. Supervises 15 to 20 employees (Cost Accountants, Operating Accountants, Budget Analyst, Accounting Technicians, Financial Data Analysts).

QUALIFICATIONS: Applicants must possess 52 weeks of specialized experience at the next lower grade level Specialized experience is experience, which is directly related to this position and has equipped the applicant with the particular knowledge, skills, and abilities in order to

successfully perform the duties described above. **EDUCATION REQUIREMENT**: Degree in accounting, or a degree in a related field such as business administration, finance, or public administration that included or was supplemented by 24 semester hours in accounting. The 24 hours may include up to 6 hours of credit in business law, **OR** Combination of education and experience - at least 4 years of experience in accounting, or an equivalent combination of accounting experience, college-level education, and training that provided professional accounting knowledge. The applicant's background must also include one of the following: 1) Twenty-four semester hours in accounting or auditing courses of appropriate type and quality. This can include up to 6 hours of business law, 2) A certificate as a Certified Public Accountant or a Certified Internal Auditor, obtained through written examination.

NOTE: Applications will be accepted from status and non-status candidates. Status candidates who wish to be considered under both merit and competitive procedures must submit two (2) complete applications. When one (1) application is received, it will be considered tinder merit promotion procedures only.

RANKING FACTORS: *(Applicants who meet the above qualification requirements will be rated on the basis of relevant experience, education, training, supervisory appraisal, job-related awards, and the factors listed below. Applicants should be specific in documenting these areas in their application materials.)*

1. Broad knowledge of and experience in contract, control and review sufficient to perform overall duties and maintain Internal control over financial resources.

2. Mastery of and experience in sales support and analysis in order to provide financial, budget, and analytical support to the Managing Director, Plant Operations.

3. Mastery of analytical techniques and experience in being detailed oriented.

4. Skill in preparing and analyzing capital investment opportunities and proposals.

5. Ability to work with a unionized workforce.

6. Experience in Cost Accounting.

7. Experience with government appropriations.

ALL APPLICANTS MUST INCITE THE FOLLOWING:

Applicants may submit an Optional Form 612, "Optional Application for Federal Employment" (or SF-171), or a resume. If a resume is submitted. It mast contain all pertinent data in the OF-612.

Current and former Federal employees must submit copies of their latest annual performance rating and SF-50 as proof of 3tntua or reinstatement eligibility. Veterans who are preference eligibles or who have been separated from the aimed forces under honorable conditions after 3 years or more of continuous active service may apply. Applicants eligible under the **Veterans Readjustment Act (VRA)** will also be considered, if this position is being announced at the grade PG-11 level and below. Veterans must submit a copy of their DD-214, "Certificate of Release or Discharge from Active Duty"; if claiming 10-point veterans' preference, submit a SF-15, "Application for IG-Point Veterans' Preference," plus the proof required by that form. Applicants seeking Excepted Appointments based on disabilities must provide certification to a State or District of Columbia rehabilitation counselor indicating that they meet the requirements for and are eligible for an Excepted Appointment based on a physical or menial disability.

Selectees must successfully pass a drug test before appointment

GPO WILL NOT PAY RELOCATION COSTS.

OTHER ESSENTIAL INFORMATION:

Applicants must:
-be a United States citizen or national (e.g. resident of American Samoa).

-include their Social Security Number on their application.

-provide the title and length of related courses. For college classes include the number of credit hours (not required if a degree has been earned).

-include the vacancy announcement number and position title on their application.

-describe their duties and responsibilities in their own words; position descriptions may not be submitted.

-meet tune-in-grade and qualification requirements by the closing date of this announcement

-submit a GPO Form 2566, "Report of Merit Promotion Action," if they wish to obtain a report on the status of their application.

-submit applications and required forms postmarked no later than the dosing date of this announcement

SUBMIT APPLICATIONS TO:

Team 2
U.S. Government Printing Office
Employment Branch, Room CI06, Stop: PSE
732 North Capitol Street, N.W.
Washington, DC 20401
FAX (202) 512-1292

FOR ADDITIONAL INFORMATION CALL:

(202)512-1124
TDD (202) 512-1519

"THIS AGENCY PROVIDES REASONABLE ACCOMODATIONS TO APPLICANTS WITH DISABILITIES"

"THE GOVERNMENT PRINTING OFFICE IS AN EQUAL OPPORTUNITY EMPLOYER"

TITLE II—EXTENSION OF RIGHTS AND PROTECTIONS

PART A—EMPLOYMENT DISCRIMINATION, FAMILY AND MEDICAL LEAVE, FAIR LABOR STANDARDS, EMPLOYER POLYGRAPH PROTECTION, WORKER ADJUSTMENT AND RETRAINING, EMPLOYMENT AND REEMPLOYMENT OF VETERANS, AND INTIMIDATION

SEC. 201. RIGHTS AND PROTECTIONS UNDER TITLE VII OF THE CIVIL EMPLOYMENT ACT OF 1964, THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, THE REHABILITATION ACT OF 1973, AND TITLE I OF THE AMERICANS WITH DISABILITIES ACT OF 1990.

(a) DISCRIMINATORY PRACTICES PROHIBITED—All personnel actions affecting covered employees shall be made free any discrimination based on--

(1) race, color, religion, sex or national origin, within the meaning of section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2);

(2) age, within the meaning of section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a);

(3) disability, within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and sections 102 through 104 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112-12114).

(b) REMEDY—

(1) CIVIL RIGHTS.—The remedy for a violation of subsection (a)(1) shall be--

(A) such remedy as would be appropriate if awarded under section 706(g) of the Civil Rrights Act of 1964 (42 U.S.C. 2000e-5(G)); and

(B) such compar-isatory damages as would be appropriate if awarded under section 1977 of the Revised Statutes (42 U.S.C. 1961), or as would be appropriate if awarded under sections 1977A(a)(1), 1977A(b)(2), and, irrespective of the size of the employing office, 1977A(b)(3)(D) of the Revised Statutes (42 U.S.C. 1981a(a)(1)m 1961a(b)(2), and 1981a(b)(3)(D)).

(2) AGE DISCRIMINATION.—The remedy for a violation of subsection (a)(2) shall be—

(A) such remedy as would be appropriate if awarded under section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)); and

(B) such liquidated damages as would be appropriate if awarded under section 7(b) of such Act (29 U.S.C. 626(b)). In addition, the waiver provisions of section 7(f) of such Act (29 U.S.C. 626(f)) shall apply to covered employees.

(3) DISABILITIES DISCRIMINATION.—The remedy for a violation of subsection (a)(3) shall be—

(A) such remedy as would by appropriate if awarded under section 505(a)(1) of the Rehabilitation Act of 1973 (29U.S.C. 794(a)(1)) or section 107(a) of the Americans with

Disabilities Act of 1990 (42 U.S.C. 12117(a)); and

(B) such compensatory damages as would be appropriate if awarded under sections 1977A(a)(2), 1977A(a)(3), 1977A(b)(2), and, irrespective of the size of the employing office, 1977A(b)(3)(D) of the Revised Statutes (42 U.S.C. 1991a(a)(2), 1981a(a)(3), and 1981a(b)(3)(D)).

(c) APPLICATION TO GENERAL ACCOUNTING OFFICE, GOVERNMENT PRINTING OFFICE, AND LIABILITY OF CONGRESS.—

(1) SECTION 717 OF THE CIVIL RIGHTS ACT OF 1954.—Section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) is amended by--

(A) striking "legislative and";

(B) striking "branches" and inserting "branch"; and

(c) inserting "Government Printing Office, the General Accounting Office, and the" after "and in the".

(3) SECTION 509 OF THE AMERICANS WITH DISABILITIES ACT OF 1990.—Section 509 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12209) is amended—

(A) by striking subsections (a) and (b) of section 509;

(B) in subsection (c), by striking "(c) INSTRUMENTALITIES OF CONGRESS.—" and inserting "The General Accounting Office, the Government Printing Office, and the Library of Congress shall be covered as follows:";

(C) by striking the second sentence of paragraph (2);

(D) in paragraph (4), by striking "the instrumentalities of the Congress include" and inserting "the term 'instrumentality of the Congress' means", by striking "the Architect of the Capitol, the Congressional Budget Office", by inserting "and" before "the Library", and by striking "the Office of Technology Assessment, and the United States Botanic Garden";

(E) by redesignating paragraph (5) as paragraph (7) and by inserting after paragraph (4) the following new paragraph:

"(5) ENFORCEMENT OF EMPLOYMENT RIGHTS.—The remedies and procedures set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) shall be available to any employee of an instrumentality of the Congress who alleges a violation of the rights and protections under sections 102 through 104 of this Act that are made applicable by this section, except that the authorities of the Equal Employment Opportunities Commission shall be exercised by the chief official of the instrumentality of the Congress"; and

(F) by amending the title of the section to read "INSTRUMENTALITIES OF THE CONGRESS".

(d) EFFECTIVE DATE.—This section shall take effect 1 year after the date of the enactment of this Act.